

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA

Cedar Valley Exteriors, LP)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	Complaint for Trademark
Kiser Construction Inc.)	Infringement and Demand
d/b/a Kiser Exteriors)	For Jury Trial
d/b/a Kiser Renovations)	
)	
Defendant.)	
)	

Plaintiff Cedar Valley Exteriors, LP for its Complaint against Kiser Construction Inc. states and alleges as follows:

THE PARTIES

1. Plaintiff Cedar Valley Exteriors, LP (hereinafter "**Plaintiff**" or "**Cedar Valley**"), is a Delaware Limited Partnership with its principal place of business located at 9145 Springbrook Drive, Suite 105, Coon Rapids, Minnesota. Cedar Valley is generally engaged in providing, *inter alia*, catastrophe restoration services, namely services in the area of exterior restoration related to roofing, siding and windows, to home owners and businesses throughout the United States.

2. Upon information and belief, Defendant Kiser Construction Inc. is a Minnesota Corporation with its registered office located at 5680 Quam Avenue Northeast, #A, St. Michael, Minnesota. Upon information and belief, Kiser Construction Inc. also operates under the fictitious names of Kiser Exteriors and Kiser Renovations (hereinafter collectively "**Defendant**"). Upon information and belief, Defendant operates a business under the aforementioned names, and is engaged in providing, *inter alia*,

Trademark
3, 429, 642
3, 429, 643

general contracting services in the area of roofing, siding, rain gutter and window repair to home owners. Upon information and belief, certain of Defendant's advertising and promotion of the aforementioned businesses infringes Cedar Valley's Federal common law trademark rights, including U.S. Trademark Registration Nos. 3,429,642 and 3,429,643, as well as violates certain Minnesota statute(s).

JURISDICTION AND VENUE

3. This action arises under the Acts of Congress relating to trademarks, namely, the Lanham Act, 15 U.S.C. § 1051 *ET. SEQ.*, and particularly 15 U.S.C. §§ 1114 and 1125(a).

4. This court has subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1338(a), 28 U.S.C. § 1367(a) and 15 U.S.C. § 1121.

5. Upon information and belief, this court has personal jurisdiction over Defendant because Defendant is a Minnesota Corporation that conducts business within the District of Minnesota.

6. Upon information and belief, venue is proper in this District under 28 U.S.C. § 1391 because Defendant is a Minnesota Corporation and conducts business within the District of Minnesota.

COUNT I: TRADEMARK INFRINGEMENT

7. Plaintiff Cedar Valley re-alleges and incorporates by reference paragraphs 1 through 6.

8. Plaintiff Cedar Valley has used the color orange in a promotional

manner as a mark as applied to clothing worn during the performance of its services, as well as having used the color orange in a promotional manner as a mark as applied to yard signs and other advertising materials, in commerce since at least 1999 in association with providing its exterior restoration services, namely: building construction and repair; building inspection; construction and renovation of buildings; construction and repair of buildings; general construction contracting; installing siding; and roofing services including roofing contracting, roofing installation and roofing repair (hereinafter "**Cedar Valley's services**").

9. Cedar Valley is the owner of U.S. Trademark Registration No. 3,429,642 for the color orange as applied to yard signs and other advertising materials in international class 037 for: building construction and repair; building inspection; construction and renovation of buildings; construction and repair of buildings; general construction contracting; installing siding; roofing contracting; roofing installation; roofing repair; roofing services. A copy of the registration, which has been duly and legally issued by the United States Patent & Trademark Office, is attached hereto as Exhibit A.

10. Cedar Valley is the owner of U.S. Trademark Registration No. 3,429,643 for the color orange as applied to clothing worn during the performance of the Cedar Valley's services in international class 037 for: roofing services; roofing installation; roofing repair; building construction and repair; building inspection; construction and renovation of buildings; construction and repair of buildings; general construction contracting; installing siding; roofing contracting. A copy of the registration, which has been duly and legally issued by the United States Patent &

Trademark Office, is attached hereto as Exhibit B.

11. Since the date of issuance of the aforementioned registrations, Cedar Valley has continued to use the aforementioned trademarks in interstate commerce in association with Cedar Valley's services.

12. Upon information and belief, Defendant has imitated, adopted and used the color orange in a promotional manner as a mark that is likely to confuse the Defendant with Cedar Valley. Upon information and belief, examples of the Defendant's infringing use are attached herewith as Exhibit C (a promotional flyer) and Exhibit D (print-screens of selected pages from the Defendant's website which can be found at <http://www.kiserrenovations.com>).

13. Plaintiff Cedar Valley's use of the color orange in a promotional manner as a mark preceded by many years the Defendant's adoption of color orange in a promotional manner as a mark.

14. Defendant has infringed U.S. Trademark Registration Nos. 3,429,642 and 3,429,643 by using the color orange in a promotional manner as a mark in commerce by various acts including advertising goods and services utilizing the color orange as a mark. Defendant's use of the color orange in a promotional manner as a mark is without permission or authority of Plaintiff Cedar Valley and Defendant's use is likely to cause confusion, to cause mistake, and/or to deceive.

15. Plaintiff Cedar Valley therefore alleges that the acts of trademark infringement have been committed with the intent to cause confusion, mistake and to deceive.

16. The use by Defendant of the color orange in a promotional manner

as a mark is an infringement of Cedar Valley's registered trademarks, and unless restrained by this Court, Defendant will continue to infringe Plaintiff Cedar Valley's registered marks and cause Plaintiff Cedar Valley irreparable injury.

17. By reason of Defendant's acts alleged herein, Plaintiff Cedar Valley has or will suffer damage to its business, reputation and goodwill and the loss of sales and profits Plaintiff Cedar Valley would have made but for Defendant's acts.

18. Upon information and belief, Defendant continues to do the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff Cedar Valley's irreparable damage. It would be difficult to ascertain the amount of compensation that could afford Plaintiff Cedar Valley adequate relief for such continuing acts. Plaintiff Cedar Valley's remedy at law is not adequate to compensate for the damages that it has and will incur.

COUNT II: VIOLATION OF §43(a) OF THE LANHAM ACT

19. Plaintiff Cedar Valley re-alleges and incorporates by reference paragraphs 1 through 18.

20. Count II arises under Section 43(a) of the Federal Trademark Act of 1946 as amended (15 U.S.C. §1125(a)).

21. For many years, Cedar Valley has used the color orange in a promotional manner as a mark in association with Cedar Valley's services provided by it and marketed in interstate commerce throughout the United States.

22. Cedar Valley has used the color orange in a promotional manner as a mark to distinguish Cedar Valley's services from all other services of the same classes,

and Cedar Valley has acquired substantial goodwill through the use of the color orange in a promotional manner as a mark.

23. Cedar Valley's use of the color orange in a promotional manner as a mark has acquired secondary meaning with the pertinent public indicating Cedar Valley as the source of its services.

24. Cedar Valley's use of the color orange in a promotional manner as a mark preceded by many years Defendant's adoption of the color orange in a promotional manner as a mark.

25. Defendant's use of the color orange in a promotional manner constitute acts in violation of 15 U.S.C. §1125(a) in that such use is likely to cause confusion, cause mistake or deceive as to affiliation, connection or association of Defendant with Cedar Valley.

26. Defendant's use of the color orange in a promotional manner falsely attributes Cedar Valley as the origin, sponsorship or approval of the Defendant's products, and falsely represents that the Defendant's services are provided by, marketed by, sponsored by, approved of or licensed by Cedar Valley.

27. As a proximate result of the Defendant's acts, Cedar Valley has suffered detriment to its business, goodwill, reputation and profits, all to its damage in an amount as yet not fully ascertained.

28. As Defendant has flagrantly disregarded the rights of Cedar Valley, this is an exceptional case and Cedar Valley is entitled to recover three times its damages plus reasonable attorney's fees pursuant to 15 U.S.C. §1117.

COUNT III: DECEPTIVE TRADE PRACTICES

29. Plaintiff Cedar Valley re-alleges and incorporates by reference paragraphs 1 through 28.

30. Count III arises under Minnesota Statute section 325D.44 of the Minnesota Uniform Deceptive Trade Practices Act.

31. For many years, Cedar Valley has used the color orange in a promotional manner as a mark in association with Cedar Valley's services provided by and marketed by Cedar Valley in state of Minnesota.

32. Cedar Valley has used the color orange in a promotional manner as a mark to distinguish Cedar Valley's services from all other similar services in the state of Minnesota, and Cedar Valley has acquired substantial goodwill through the use of the aforementioned marks.

33. Cedar Valley's use of the color orange in a promotional manner as a mark has acquired secondary meaning with the pertinent public in Minnesota indicating Cedar Valley as the source of its services.

34. Cedar Valley's use of the color orange in a promotional manner as a mark preceded by many years Defendant's adoption of the color orange in a promotional manner as a mark.

35. Defendant's use of the color orange in a promotional manner constitute acts in violation of Minn. Stat. § 325D.44 in that such use is likely to cause confusion, misunderstanding, cause mistake or deceive as to affiliation, connection or association of Defendant with Cedar Valley.

36. Defendant's use of the color orange in a promotional manner

constitute acts in violation of Minn. Stat. § 325D.44 in that such use is likely to cause confusion, misunderstanding, cause mistake or deceive as to source, sponsorship or approval of Defendant by Cedar Valley.

37. Defendant's use of the color orange in a promotional manner constitutes acts in violation of Minn. Stat. § 325D.44 in that such use passes off goods or services of Defendant as those of Cedar Valley.

38. Defendant's use of the color orange in a promotional manner falsely attributes Cedar Valley as the origin, sponsorship or approval of the Defendant's products, and falsely represents that the Defendant's services are provided by, marketed by, sponsored by, approved of or licensed by Cedar Valley.

39. As a proximate result of the Defendant's acts, Cedar Valley has suffered detriment to its business, goodwill, reputation and profits, all to its damage in an amount as yet not fully ascertained.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cedar Valley prays for the following relief:

- (a) that this Court grant an injunction pursuant to 15 U.S.C. § 1116, enjoining Defendant and his/her agents, managers, officers, directors, servants and employees from directly or indirectly using the color orange as a mark, or any confusingly similar mark, in association with Cedar Valley's services;
- (b) that this Court order pursuant to 15 U.S.C. § 1118, that all signs, labels, printouts, packages, samples, inventories, products, catalogs, price lists, wrappers, receptacles, and advertisements in the possession of Defendant

which are the same or confusingly similar to Plaintiff Cedar Valley's marks be delivered up to Cedar Valley for destruction;

- (c) that this Court pursuant to 15 U.S.C. § 1117 order Defendant to account to Plaintiff Cedar Valley for any and all profits derived from the sale of goods or services, and for all damages sustained by Plaintiff Cedar Valley by reason of trademark infringement complained of herein;
- (d) that this Court pursuant to 15 U.S.C. § 1117 award Plaintiff Cedar Valley the amount of actual damages suffered by Plaintiff Cedar Valley and that the amount be trebled;
- (e) that this Court pursuant to 15 U.S.C. § 1117 award Plaintiff Cedar Valley the costs of this action in that this is an exceptional case and that Plaintiff Cedar Valley be awarded its reasonable attorneys' fees;
- (f) that this Court grant an injunction pursuant to Minn. Stat. § 325D.45, subdivision 1, enjoining Defendant and his/her agents, managers, officers, directors, servants and employees from directly or indirectly using the color orange as a mark, or any confusingly similar mark, in association with Cedar Valley's services;
- (g) that this Court pursuant to Minn. Stat. § 325D.45, award Plaintiff Cedar Valley the costs of this action and attorney's fees in that Defendant willfully engaged in the trade practice knowing it to be deceptive; and
- (h) that this Court award such other and further relief as shall be deemed just.

JURY DEMAND

Plaintiff Cedar Valley demands a jury trial on all issues so triable.

Respectfully submitted,

Cedar Valley Exteriors, LP

Dated: 04 June 2010

By: s/ Dustin R. DuFault

Dustin R. DuFault (No. 302,776)

DuFault Law Firm, P.C.

700 Lumber Exchange Building

Ten South Fifth Street

Minneapolis, Minnesota 55402

Tel: (952) 935-4392

Dustin@DuFault-Law.com

**ATTORNEY FOR PLAINTIFF
CEDAR VALLEY EXTERIORS, LP**